



July 13, 1999

Mr. Don Ballard  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-1946

Dear Mr. Ballard:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125643.

The Office of the Attorney General (the "OAG") received a request for "any public document . . . which references 'the names' (the true identities) of the 2 men by whom [the requestor] was hurt, finalized by Official Finding - Victim's Assistance Case # VC 96123527," and "the Attorney General Investigator's documentation." You submit to this office a memorandum and the requested information from the Crime Victims' Compensation Division of the Office of the Attorney General (the "CVC").<sup>1</sup> You assert that the requested information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

CVC asserts that some of the requested information is protected by section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform this office that the investigation at issue *did not* result in conviction or deferred adjudication. CVC has also represented to this office that the Arlington Police Department, which investigated the underlying offense report, has advised CVC that the information should be withheld pursuant to section 552.108 of the Government Code. Based on the attorney general's right of access under article 56.38(d) of the Code of Criminal Procedure and the assertion by CVC that the requested information pertains to a "criminal case that did not result in a conviction or deferred adjudication," CVC may withhold some of the requested information under section 552.108. Attorney General Opinion H-917 (1976); Open Records Decision No. 516 (1989). Therefore, we find that you have shown the applicability of section 552.108(a)(2) to a portion of the requested information, since the investigation *did not* result in conviction or deferred adjudication.

However, as you are aware, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c).

Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, we conclude that, except for the front page information, the OAG may withhold the requested information from disclosure under section 552.108(a)(2). You must release basic information about the crime, including the name of the suspects, to the requestor.

CVC also raises section 552.111 of the Government Code to protect from disclosure the "OAG investigator's documentation."<sup>2</sup> Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Although CVC raised section 552.111 for the "OAG investigator's documentation," CVC also represents that "we see no harm to the law enforcement agency or our agency in releasing this information to the requestor."<sup>3</sup> Therefore, since it appears that CVC intends to release the requested information to the requestor and the information at issue was not submitted to our office, we will not address the application of section 552.111 to the requested information. Consequently, we assume that responsive information will be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

***Open Records Division***

Ref.: ID# 125643

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<sup>2</sup>We note that you have not submitted any records which would implicate section 552.111 of the Government Code. Pursuant to section 552.301(b), a governmental body is required to submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

<sup>3</sup>The Government Code places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

Encl. Submitted documents

cc: Mr. David R. Reynolds  
2550 Joel Wheaton #3905  
Houston, Texas 77082  
(w/o enclosures)